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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051
FACSIMILE (202) 225-4784
MINORITY (202) 225-5074

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August 12, 2008

The Honorable Robert Gates
Secretary of Defense
U.S. Department of Defense
1000 Defense Pentagon
Washington, D.C. 20301-1000

Dear Secretary Gates:

We are writing to request that you direct your staff to cooperate with the Committee's investigation into sexual assault in the military.

On July 31, 2008, the National Security and Foreign Affairs Subcommittee held a hearing titled, "Oversight Hearing on Sexual Assault in the Military." On June 27, 2008, more than a month before the hearing, the Subcommittee invited Dr. Kaye Whitley, the Director of the Defense Department's Sexual Assault Prevention and Response Office, to testify.¹ This office "serves as the single point of accountability for the Department of Defense sexual assault policy."²

On July 10, 2008, staff for the Assistant Secretary of Defense for Legislative Affairs informed Committee staff by telephone that Dr. Whitley would not be permitted to testify.

On July 28, 2008, the Committee issued a subpoena for Dr. Whitley's testimony.³ This subpoena was supported by the Chairmen and Ranking Members of both the Full Committee and the National Security Subcommittee.

¹ Letter from Rep. John F. Tierney, Chairman, Subcommittee on National Security and Foreign Affairs, to Dr. Kaye Whitley, Director, Office of Sexual Assault Prevention and Response, U.S. Department of Defense (June 27, 2008).

² Office of Sexual Assault Prevention and Response, U.S. Department of Defense, *SAPR Home Page* (accessed Aug. 7, 2008) (online at www.sapr.mil).

³ Subpoena from Henry A. Waxman, Chairman, House Committee on Government Reform, to Dr. Kaye Whitley, Director, Office of Sexual Assault Prevention and Response, U.S. Department of Defense (July 28, 2008).

At the hearing, the Subcommittee heard testimony from a sexual assault victim and the family member of a sexual assault victim, as well as the Government Accountability Office, which reported that over half of the women sexually assaulted in the military choose not to report the assaults, in part, because of “a belief that nothing would be done [and] a fear of ostracism.”⁴

Dr. Whitley did not appear at this hearing. Instead, Michael Dominguez, the Principal Deputy Under Secretary of Defense for Personnel and Readiness, testified that he instructed Dr. Whitley not to testify at the hearing.⁵ He also stated that he had “consulted with the assistant secretary of defense for legislative affairs and general counsel of the Department of Defense” in making this decision.⁶

We believe the Department’s actions are completely without justification. The Department has provided no valid legal basis for its decision to prevent a witness from complying with a duly authorized congressional subpoena. The President has not asserted executive privilege over the testimony of Dr. Whitley. During the hearing, Subcommittee Chairman Tierney asked Mr. Dominguez whether there had been any assertion of executive privilege, and he testified that there had not been.⁷

The Department’s actions also may violate a statutory provision prohibiting the use of federal funds to pay the salary of any official who “prohibits or prevents ... any other officer or employee of the federal government from having any direct oral or written communication or contact with any member, committee, or subcommittee of the Congress in connection with any matter pertaining to ... the department or agency of such other officer or employee in any way.”⁸

We are writing today to request that you make Dr. Whitley available to testify before the Subcommittee. We ask that you respond to this letter by Monday, August 18, 2008, and inform the Committee whether you intend to comply. If the Department does not agree by this date to remove its restrictions on Dr. Whitley’s testimony, the Committee will issue subpoenas for three Defense Department officials to appear at a hearing on Friday, September 12, 2008, on the Department’s legal rationale for refusing to comply with the Committee’s investigation. They are:

⁴ Government Accountability Office, Testimony Before the Subcommittee on National Security and Foreign Affairs, Committee on Oversight and Government Reform, “Preliminary Observations on DOD’s and the Coast Guard’s Sexual Assault Prevention and Response Programs,” at summary and 12-15 (July 31, 2008) (GAO-08-1013T).

⁵ House Subcommittee on National Security and Foreign Affairs, *Oversight Hearing on Sexual Assault in the Military*, 110th Cong. (July 31, 2008).

⁶ *Id.*

⁷ *Id.*

⁸ P.L. 110-161, sec. 717 (under Title VII of Division D, Financial Services and General Government Appropriations Act of 2008).

Hon. Robert M. Gates

August 12, 2008

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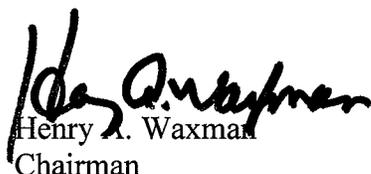
- Dr. David S. C. Chu,
Under Secretary of Defense for Personnel and Readiness;
- Daniel J. Dell'Orto,
Acting General Counsel; and
- Robert Wilkie,
Assistant Secretary of Defense for Legislative Affairs.

In addition, the Committee requests copies of all documents, including e-mail communications, relating to the Subcommittee's request for Dr. Whitley's testimony on July 31, 2008. Please provide these documents by Tuesday, September 2, 2008.

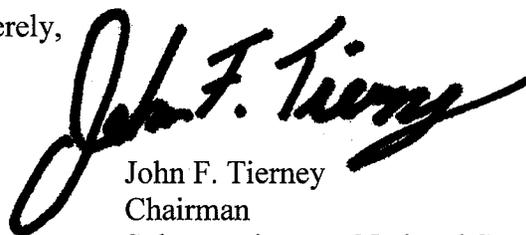
The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction as set forth in House Rule X. Information for witnesses appearing before the Committee is contained in the enclosed Witness Information Sheet.

If you have any questions, please contact me or ask your staff to contact Dave Turk or Andrew Su with the Subcommittee majority staff at (202) 225-2548 or Dr. R. Nicholas Palarino with the Republican staff at (202) 225-5074.

Sincerely,



Henry A. Waxman
Chairman
Committee on Oversight and
and Government Reform



John F. Tierney
Chairman
Subcommittee on National Security
and Foreign Affairs



Tom Davis
Ranking Member
Committee on Oversight and
and Government Reform



Christopher Shays
Ranking Member
Subcommittee on National Security
and Foreign Affairs

cc: Dr. David S. C. Chu
Under Secretary of Defense
for Personnel and Readiness

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Robert Wilkie
Assistant Secretary of Defense
for Legislative Affairs

Daniel J. Dell'Orto
Acting General Counsel

Michael Dominguez
Principal Deputy Under Secretary of Defense
for Personnel and Readiness

Dr. Kaye Whitley
Director, Office of Sexual Assault Prevention and Response

Enclosures